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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1943.

No. 234.

JENNINGS A. SNIDER, *Petitioner,*

v.

VIDA RUTH KELLY, THE NATIONAL BANK OF WASHINGTON,  
Executor of the Estate of James Merrill Kinsell, De-  
ceased, RUTH KELLY, MARY JANE KELLY, HILDA F.  
KELLY and VIDA CLYDE KELLY, *Respondents.*

**BRIEF OF RESPONDENTS, VIDA RUTH KELLY, THE  
NATIONAL BANK OF WASHINGTON, EXECUTOR  
OF THE ESTATE OF JAMES MERRILL KINSELL,  
DECEASED, RUTH KELLY, MARY JANE KELLY  
AND HILDA F. KELLY, IN OPPOSITION TO PETI-  
TION FOR WRIT OF CERTIORARI.**

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This brief is filed on behalf of all of the respondents, with the exception of Vida Clyde Kelly, who is an infant represented by a Guardian Ad Litem appointed by the trial court. There is no conflict of interest between the several respondents, who have taken a common position against the petitioner in the courts below. For convenience, the parties are referred to herein as they appeared in the trial court, that is, the petitioner is referred to as plaintiff, and the respondents are referred to as defendants.

**STATEMENT OF THE CASE.**

On November 19, 1907, Ida J. Kinsell owned certain real estate in the District of Columbia, known as Lot One hundred seventy-three (173) in T. F. Schneider's subdivision of lots in Square One hundred fifty-five (155), improved by a residence known as 1608 Seventeenth Street, Northwest, which was assessed for purposes of taxation at Thirteen thousand eight hundred ninety-nine dollars (\$13,899.). (R. 3.) Mrs. Kinsell borrowed Ten thousand dollars (\$10,000.) from her son, James Merrill Kinsell, for which she gave to him her note for that amount, dated November 19, 1907, payable to his order five years after date. (R. 34, 35.) To secure the payment of this note, she executed and delivered a deed of trust in the form generally used in the District of Columbia, conveying said property to Malcolm Hufty and Lawrence Hufty, as Trustees. The deed of trust was duly recorded in the Office of the Recorder of Deeds on November 27, 1907, in Liber 3114, folio 427. (R. 35.)

Ida J. Kinsell died August 16, 1937, (R. 26) leaving as her only heirs-at-law one daughter, the defendant, Vida Ruth Kelly, and James Merrill Kinsell, her only son, (R. 24.) She left a will dated September 24, 1934, and a codicil thereto dated January 30, 1935, which were admitted to probate in Indiana County, Pennsylvania, where she maintained her domicile. William Alexander Clementson, Jr., a grandson, duly qualified as Administrator of her estate with the will annexed, and at the date of trial was administering her estate. By her will, the testatrix made elaborate and detailed provisions for the disposition of her property, but no reference was made therein to the home in the District of Columbia. Accordingly, her interest in such property passed by descent to her son and daughter. (R. 35.)

James Merrill Kinsell was a bachelor, and during his mother's lifetime made his home with her. At her request, he made substantial repairs upon the residence property,

paid the taxes at different times, and advanced the money necessary to remodel it for conversion into a guest house. (R. 24, 30, 36.) In view of the loan made to his mother in 1907, and his expenditures upon the property thereafter, his mother, his sister, and the members of her family treated him as if he were in fact the owner of the property. (R. 25, 26, 36, 38.) Mrs. Kelly never had any claim to the property, and knew that since the note was signed in 1907. (R. 26.) In order to assist her brother in getting a clear title, she executed and delivered to him on March 1, 1938, the deed of conveyance which is the subject of attack. (R. 26.)

James Merrill Kinsell died November 11, 1940, leaving a will dated June 9, 1938. The defendant, The National Bank of Washington, was named as Executor and duly qualified as such. (R. 24.) From the date of his death, the property was managed for the Executor by Mrs. Bell Lewis, surviving sister of Ida J. Kinsell, and the aunt of James Merrill Kinsell. (R. 40.) He had been in exclusive possession from the date of his mother's death. (R. 40.)

This suit was brought November 28, 1938. (R. 2.) In addition to Vida Ruth Kelly, James Merrill Kinsell was named as a defendant. Upon his death, there were substituted the devisees under his will, as well as the Executor thereof, and the action was proceeded with against them. (R. 6.)

At the trial, it was conceded that the plaintiff recovered a judgment against the defendant, Vida Ruth Kelly on November 14, 1938, for \$8,398.70. It was likewise conceded that by the will of James Merrill Kinsell, his residuary estate was bequeathed and devised unto the defendants, Ruth Kelly, Jane Kelly, Hilda F. Kelly, then a minor but now of age and Vida Clyde Kelly, a minor, four children of the defendant, Vida Ruth Kelly, by her late husband, Clyde Kelly, a former Member of Congress; also that Vida Ruth Kelly executed the conveyance of her interest in the Seventeenth Street property to her brother. No other evidence was offered by the plaintiff in his case in chief. (R. 22-24.)



Vida Ruth Kelly testified as to the reasons for and circumstances of the conveyance. Defendants also offered evidence as to the deed of trust indebtedness upon the property, and the devoted relations between Ida J. Kinsell and her son, as well as the relations between the plaintiff and Mrs. Kelly, particularly her efforts to pay her debt to him. At the conclusion of the evidence, the trial court made findings of fact. (R. 15-19.) Upon such facts, the court concluded as a matter of law that the plaintiff had failed to sustain the allegations of his complaint; that the conveyance made by Vida Ruth Kelly to her brother was not fraudulent; that the same was not made with the purpose and intent of preventing plaintiff from satisfying his judgment against Vida Ruth Kelly, and that accordingly the complaint should be dismissed. A decree in accordance with these conclusions was duly entered. (R. 19, 20.) On appeal the United States Court of Appeals for the District of Columbia affirmed the judgment of the District Court, holding that the deed executed by Mrs. Kelly "was of the nature of a quitclaim to clear her brother's title"; that "the acts of the parties were entirely consistent with an honest purpose, and that the conveyance was not in violation of the statute." (R. 43, 44.) A motion for rehearing was denied May 29, 1943. (R. 45.) The opinion is reported in 138 F. (2d) Adv. Op. 817.

#### **Point 1.**

Plaintiff says the decision of the United States Court of Appeals for the District of Columbia relates to a question of general importance and is in conflict with prior decisions of that Court. This is denied. At most, there was involved the application of a statute making void any conveyance with the intent to hinder, delay, or defraud creditors. The question is of local, not general, importance. The decisions reached, both by the trial court and the appellate court, are in accord with prior decisions by the Court of Appeals, as

demonstrated by the cases cited in the opinion. Indeed, the cases relied upon by the plaintiff show there is no conflict.

### **Point 2.**

It is contended that because the conveyance was without pecuniary consideration Mrs. Kelly had the burden of proving that she still retained sufficient funds to pay her debts, and in the absence of such proof, the conveyance was fraudulent. The cases cited do not support plaintiff's contention. They involve an essentially different set of facts from the facts in the case at Bar. In each of them, the debtor was being harassed by his creditors and the effect of the conveyance was to dispose of property to which they might otherwise resort for payment. No such situation existed here. Mrs. Kelly's good faith was clearly demonstrated by her attempt to pay three years previously. The trial judge had opportunity to observe her on the witness stand, and found as a fact that her conveyance to her brother "was not made with the purpose and intent of preventing the plaintiff from satisfying his judgment against her." On the contrary, the court found she conveyed "with the intention and purpose of vesting in him (her brother) the whole title to said property without the necessity of any legal proceedings." (R. 19.)

The matter is aptly expressed by the United States Court of Appeals in the opinion, as follows:

"At best, she had a claim which, in the hands of appellant, might have had some nuisance value as a cloud upon the title. The real owner was James Merrill Kinsell. The deed from his sister to him was of the nature of a quitclaim to clear her brother's title." (R. 44)

### **Point 3.**

Plaintiff asserts that the statute of limitations had run against enforcement of the mortgage held by James Merrill Kinsell; that accordingly, Mrs. Kelly had more than a paper

interest, and her conveyance transferred something of real value. This contention overlooks the fact that when she acquired an interest in the property passing from her mother, the legal title was in the Trustees named in the deed of trust. That legal title is still outstanding, although the trustees are dead. The debt has not been paid. Mrs. Kinsell acknowledged the obligation as a mortgage to one of her business advisors and friends (R. 30), to her daughter, Vida Ruth Kelly (R. 25, 26), and to her sister. (R. 39.) Such admissions preclude any presumption of payment.

*Brobst' Lessee v. Rowe*, 10 Wall. 519, 19 L. ed. 1002.  
*Hughes v. Edwards*, 9 Wheat. 489, 6 L. ed. 142-144.

Mrs. Kinsell could have redeemed only upon paying the mortgage debt. This principle is firmly established and is universally recognized.

*Brobst' Lessee v. Rowe*, *supra*.  
*Hughes v. Edwards*, *supra*.  
 2 Jones on Mortgages, 8th Ed. 879.

The plaintiff is not a purchaser for value. His interest could only be derived through Mrs. Kelly. Her interest was derived from her mother. When her mother's title passed, it was subject to the outstanding mortgage debt. Therefore, any interest Mrs. Kelly acquired was likewise subject to that debt.

It is urged on plaintiff's behalf that any right other than that of an heir-at-law held by James Merrill Kinsell was barred by limitations. The cases cited do not support the contention. Under the law in this District, this defense, if available, and we submit it is not available, could only be interposed by the Administrator of the estate of Ida J. Kinsell. (Title 18, Sec. 515, D. C. Code 1940.) The Administrator testified that he did not intend to avail himself of any such plea, and that he recognized the deed of trust as a

valid obligation of Ida J. Kinsell. (R. 36, 37.) This was a matter which he alone had discretion to determine.

*Hanchett v. Blair*, 100 Fed. 817.  
19 Am. & Eng. Enc. L. 184.

#### Point 4.

While the plaintiff requested no special findings of fact, he contends that the findings of fact made by the trial judge have no legal evidence to support them. The broad claim is confined to certain specified findings. With respect to this contention very little need be said. Finding No. 2 is based upon the uncontradicted testimony of Mrs. Kelly that the home which was conveyed to Garfinckel cost \$16,500. (R. 27.) Finding No. 6 is supported by the testimony of four witnesses, viz: John Alden (R. 28-29), John E. Laskey (R. 30, 31), Mabel E. Ashley (R. 34), and Martha Bell Lewis. (R. 39.) Finding No. 8 is supported by the testimony of John Alden (R. 30) and William Alexander Clementson. (R. 36.) Finding No. 9 is supported by the testimony of Martha Bell Lewis. (R. 40.) Finding No. 10 is supported by the testimony of three witnesses, viz.: John E. Laskey (R. 31, 32), John Alden (R. 28), Ralph G. Wilson. (R. 37.) Finding No. 11 is based upon defendant's Exhibit No. 1 (R. 34), and the testimony of John Alden (R. 28, 29, 30), John E. Laskey (R. 30, 31), Mabel E. Ashley (R. 34), Martha Bell Lewis (R. 40), Vida Ruth Kelly. (R. 26.)

Accordingly, the argument that the findings have no legal evidence to support them is without merit. There was positive testimony tending to establish every fact found by the trial court. Moreover, he was in a position to observe and did observe the witnesses by whom it was sought to develop the facts. He reached the conclusion, on the evidence taken before him, that the testimony of these witnesses was reliable, and that they spoke the truth. Such findings, so made, are conclusive on appeal.

Rule 52 Federal Rules of Civil Procedure.

*Adamson v. Gilliland*, 242 U. S. 350, 61 L. ed. 356.

*Klimkiewicz v. Westminster Deposit and Trust Co.*,  
74 App. D. C. 333, 122 F. (2) 957.

*Wittmayer v. U. S.*, 118 F. (2) 808.

The Court of Appeals found that "the evidence was ample to support the findings of the court," saying "we find no reason to question their correctness or the correctness of its conclusions that appellant failed to sustain the allegations of his complaint" \* \* \*. (R. 44)

### CONCLUSION.

We respectfully submit that there was no fraud in the conveyance complained of. On the contrary, the evidence clearly showed the conveyance was made by a sister to her brother for the purpose of vesting in him the full legal title to his own home, without compelling him to resort to foreclosing the mortgage securing a debt which then exceeded the value of the property. The trial court found nothing in the circumstances to justify holding such a conveyance was fraudulent. It was actuated by perfectly proper considerations. At best, the conveyance transferred a naked paper interest. It did not have the effect and operation of hindering or delaying the plaintiff in the enforcement of his judgment. The findings of the trial court were complete. They were amply supported by the evidence given in open court by witnesses whose testimony was not assailed. The conclusions of law made by the court were the only proper conclusions in view of the evidence.

It was, therefore, proper to affirm the decree of the trial court. The judgment of affirmance was in accord with prior decisions in the District of Columbia, and not in conflict with any applicable decisions of this Court. Accordingly,

we respectfully submit that the writ of certiorari should be denied.

Respectfully submitted,

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